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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/748,819	12/30/2003	Jody Riesberg	0248-0001	7180

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EXAMINER

CONLEY, FREDRICK C

ART UNIT	PAPER NUMBER
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3673

DATE MAILED: 02/06/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/748,819	Applicant(s) RIESBERG ET AL.	
	Examiner FREDRICK C. CONLEY	Art Unit 3673	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 October 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-4 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Pat.

No. 6,845,534 to Huang.

Claim 1, Huang discloses a side sleeping pillow combination comprising.

a main pillow cushion 101 having an underside, a front and rear edge and a pair of side edges, and

a side pad (102) adjacent each of said side edges, said side pad capable of folding under said main pillow whereby a space (103) is created between said folded under

side pads, said space traversing the underside of said main pillow from said front edge to said rear edge (fig. 4).

Claim 2, wherein said side pads include a pair of pads with spacing there-between.

Claim 3, further comprising a pillowcase 12 for providing the associated spacing between said pillow and said pads.

Claim 4, further comprising a pillowcase 12 for providing the associated spacing between said pillow and said pads.

Claims 1-2 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Pat. No. 6,158,813 to Karash.

Claim 1, Karash discloses a sleeping pillow combination comprising.

a main pad 42 having an underside, a front and rear edge and a pair of side edges, and

a side pad (32,36) adjacent each of said side edges, said side pad capable of folding under said main pad whereby a space is created between said side pads, said space traversing the underside of said main pillow from said front edge to said rear edge (fig. 4). With regards to the Applicant's recitation "pillow cushion" a pillow is defined as a pad and a cushion is defined as something resilient used as a rest or support. Therefore, the neck rest of Karash meets the Applicant's claimed limitations since the neck rest functions as a pad used as a rest and support.

Claim 2, wherein said side pads include a pair of pads (32,36) with spacing there-between.

Response to Arguments

Applicant's arguments filed 10/20/05 have been fully considered but they are not persuasive.

Contrary to the Applicant's argument, the space along the underside of the main pad 101 is created by the folding side pads 102 of Haung as clearly illustrated in figure 4. Once the side pads are folded together the space is altered from an initial state illustrated in figures 1-2. Furthermore, it is clearly shown in figures 6-7 and 10 how the space changes depending on how the side pads are folded. Therefore, the space along the underside of the main pad is created by the folding side pads.

With regards to the Applicant's argument, a pillow is defined as a pad and a cushion is defined as something resilient used as a rest or support. Therefore, the neck rest of Karash meets the Applicant's claimed limitations since the neck rest functions as a pad used as a rest and support. Furthermore the Applicant has not provided any structural limitations that define the pillow cushion of the present invention, such as a fabric or quilted cover filled with a resilient filling or inner core. In response to applicant's argument that the side pads serve an entirely different function, such as creating a space between the main pillow and bed surface, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.


Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to FREDRICK C. CONLEY whose telephone number is 571-272-7040. The examiner can normally be reached on M-TH.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, HEATHER SHACKELFORD can be reached on 571-272-7049. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

FC



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PRIMARY EXAMINER
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